Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of		
Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers	)	CC Docket No. 01-338
Implementation of the Local Competition Provisions in the Telecommunications Act of 1996	)	CC Docket No. 96-98
Deployment of Wireline Services Offering Advanced Telecommunications Capability	)	CC Docket No. 98-147

COMMENTS OF THE PUBLIC UTILITIES COMMISSION OF OHIO

INTRODUCTION AND BACKGROUND

On August 21, 2003, the Federal Communications Commission (FCC) released a Further Notice of Proposed Rulemaking (FNPRM) in the above-captioned proceedings. The FCC's FNPRM invites comment on whether to alter its interpretation of section 252(i) to promote more meaningful commercial negotiations. That is, the FCC questions whether carriers seeking to use section 252(i) should be required to adopt the entire terms and conditions of an interconnection agreement approved under section 252 rather than allowing adoption of individual terms as conditions. The FCC tentatively

concludes that modifying its current approach in this manner would better serve the goals of section 252(i) and sections 251 and 252 generally.

In its October 8, 1996 local competition and interconnection decision in CC Docket 96-98, the FCC adopted an interpretation of section 252(i) of the Telecommunications Act of 1996 (1996 Act) that required incumbent local exchange carriers (ILECs) to permit ''third parties to obtain access under section 252(i) to any individual interconnection, service or network element arrangement on the same terms and conditions as those contained in any agreement approved under section 252.'' This interpretation is referred to as the ''pick and choose'' rule.

Comments responding to the FCC's FNPRM are due on Thursday, October 16, 2003. The Public Utilities Commission of Ohio (Ohio Commission) hereby submits its comments and recommendations.

DISCUSSION

The FCC tentatively concludes that it should modify its pick and choose rule pursuant to section 252(i), provided the FCC's modified rule is a reasonable interpretation of the statutory text. The FCC further notes that its current pick and choose rule may stifle innovation since ILECs may be hesitant to make a significant change in exchange for a concession, since that concession would then be available to all requesting competitive providers.

The Ohio Commission agrees with the FCC that its current pick and choose rule could stifle innovation and flexibility for the provision of interconnection services. In addition to generating significant disincentives and intransigence on behalf of the ILEC not to make any concessions to accommodate a particular CLEC need or situation, the current rule could also work to the detriment of a competitive local exchange carrier (CLEC) that entered in to the initial contract by providing subsequent carriers with competitive advantages. That is, since the CLEC entering into the original contract with the ILEC most likely compromised on some issues to gain some ILEC concessions, a new competing carrier could enter the same market and take advantage of the ILEC concession without the entering into the same obligations as the original competing carrier. In short, the current rule puts each of the companies entering into the original interconnection contract at a competitive disadvantage.

On a related mater, the Ohio Commission notes that, in light of the FCC's new unbundled network element (UNE) rules, the current pick and choose rules may be outmoded or in some circumstances unworkable. That is, since UNEs will be available (or not available) based on the individual state review of various new criteria and triggers, which among other things, will be based on economics, location, and level of competition, the portability of contract elements between ILECs and CLECs will become less likely since not all interpretations of the FCC's new rules will apply uniformly across all locations and all CLECs.

Similarly, the Ohio Commission observes that not all contracts should be made uniformly available to all CLECs. For example, once the markets for the provision of

various UNEs have been determined, the contracts may not be portable from one market to another market as a result of different regulatory obligations in varying markets. Consequently, the FCC should afford states sufficient authority to determine under what circumstances the proposed all or nothing contract provision will be made available to competing carriers. Expressed another way, a contract should only be made portable in similar situations and markets as determined by the individual state commissions.

CONCLUSION

The Ohio Commission wishes to thank the FCC for the opportunity to file comments in this proceeding.

Respectfully submitted,

ON BEHALF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

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